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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/637,608	08/11/2003	Patrick Flynn	ENER-0001-4	2473

22506 7590 07/27/2005

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FAIRFAX, VA 22030

EXAMINER

LANGEL, WAYNE A

ART UNIT	PAPER NUMBER
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1754

DATE MAILED: 07/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/637,608

Applicant(s)

FLYNN ET AL.

Examiner

Wayne Langel

Art Unit

1754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-4, 7-11, 15-18, 21-27, 31-34, 37-41 and 45-53 is/are pending in the application.
- 4a) Of the above claim(s) 15-18, 21-27, 31-34 and 37-41 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-4, 7-11 and 47-53 is/are rejected.
- 7) ☒ Claim(s) 45 and 46 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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Prosecution is reopened due to new grounds of rejection.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-4, 7-11 and 47-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over FR 2645622 in view of Prentice (newly cited). It would be obvious from Prentice to employ a selenium compound as the odorous compound in the composition of FR '622, since FR '622 suggests in the Abstract that any odorous gaseous product may be added, and Prentice discloses on page 2, lines 6-10 that selenides have a distinctive and repulsive odor, and establishes the equivalence between mercaptans and selenides.

Claims 2 and 7-11 rejected under 35 U.S.C. 103(a) as being unpatentable over FR '622 in view of either Borschel et al (newly cited) or Rasmussen et al (newly cited). It would be obvious from either Borschel et al or Rasmussen et al to employ hydrogen selenide as the odorous compound in the composition of FR '622, since FR '622 suggests in the Abstract that any odorous gaseous product may be added, and Borschel et al and Rasmussen et al both teach that hydrogen selenide has a repugnant odor. (See col. 1, lines 42-44 of Borschel et al, and col. 4, lines 21-24 of Rasmussen et al.)

Claims 2, 3, 7-11, 47-49 and 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over FR '622 in view of Schrauzer (newly cited). It would be obvious from

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Schrauzer to employ an alkyl selenol as the odorous product in the composition of FR '622, since FR '622 suggests in the Abstract that any odorous gaseous product may be employed, and Schrauzer teaches in Paragraph [0021] that selenols have an unpleasant odor.

Claims 2, 4, 7-11, 50, 51 and 53 are rejected under 35 U.S.C. 103(a) as being unpatentable over FR '622 in view of Baugh (newly cited). It would be obvious from Baugh to employ dimethyl selenide or its homologs as the odorous gaseous product in the composition of FR '622, since FR '622 suggests in the Abstract that any odorous gaseous product may be employed, and Baugh teaches in col. 5, lines 40-50 that methyl selenide and dimethyl selenide produce odors that are offensive to certain types of animals.

Applicants' argument, that the examiner has failed to respond to applicants' request for an affidavit/declaration under 37 CFR 1.104(d)(2), is not convincing. 37 CFR 1.104(d)(2) is not applicable, since the rule is applicable when facts based on the examiner's personal knowledge are used as a basis for rejection. In this case there are no facts based on the examiner's personal knowledge which are used as a basis for the rejection.

Applicants' argument, that the examiner has "admitted" that selenium compound are patentably distinct from sulfur compounds, is not convincing, since the teachings of FR '622 are not limited to the use of sulfur compounds.

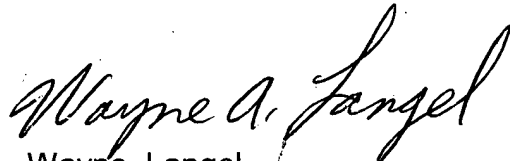
Claims 45 and 46 are objected to as based on a rejected parent claim, and would be allowed if written in independent form.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Wayne Langel whose telephone number is 571-272-1353. The examiner can normally be reached on Mondays to Fridays from 8 to 3:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stanley Silverman, can be reached on 571-272-1358. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Wayne Langel
Primary Examiner
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